

SENATE BILL 1934

By Jackson

AN ACT to amend Tennessee Code Annotated, Title 35,
Chapter 14 and Title 46, Chapter 1, Part 2, relative
to cemeteries.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 46-1-204(a), is amended by adding
the following as a new subdivision:

(3)

(A) As used in this subdivision (a)(3), "department" means the
department of commerce and insurance.

(B) The trustee for a trust established pursuant to this section may
establish:

(i) An improvement care trust fund for each cemetery; or

(ii) A master improvement care trust fund to hold the funds for
multiple cemetery companies based in this state. The master
improvement care trust must identify the subaccounts for each individual
participating cemetery company trust.

(C) A trustee managing a trust established pursuant to this section shall:

(i) Manage the trust in accordance with the Tennessee Uniform
Prudent Investor Act of 2002, compiled in title 35, chapter 14; however, §
35-14-103(b) does not apply to trusts, or trustees managing a trust,
established pursuant to this subsection (a);

(ii) Provide an annual financial report concerning the trust to the department in accordance with this chapter and rules promulgated pursuant to this chapter; and

(iii) Make accounting records for the trust available to the comptroller of the treasury and the department, upon request, for review and audit.

(D) If the trustee uses a board for the management of the trust established pursuant to subsection (a), then the trustee must maintain insurance on behalf of each board member against liability asserted against or incurred by the board member in that capacity.

SECTION 2. Tennessee Code Annotated, Section 46-1-204, is amended by deleting subdivision (e)(1)(A) and substituting:

(A) "Net earnings" means:

(i) All net income, excluding capital gains; or

(ii) An amount not exceeding five percent (5%) of the fair market value of the trust, averaged over the lesser of the balance as of the last day of the trust fiscal year immediately preceding the distribution year and the two (2) preceding years or, if less than two (2) years, the period of time the trust has been in existence. If the earnings are part of a master improvement care trust, then only the fair market value of the cemetery company's portion of the trust must be used to calculate the cemetery company's net earnings. This amount is not reduced by taxes or fees, unless the fees exceed two and one-half percent (2.5%) of the market value of the trust as of the last day of the trust fiscal year immediately preceding the distribution year. If a fee exceeds two and one-half percent (2.5%)

of the market value of the trust as of the last day of the preceding fiscal year,
then the amount of the disbursement must be reduced by the excess; and

SECTION 3. Tennessee Code Annotated, Section 46-1-207(b)(2), is amended by deleting "separate".

SECTION 4. Tennessee Code Annotated, Section 46-1-207(b), is amended by adding the following as a new subdivision:

(3)

(A) A trustee establishing a trust pursuant to this section may establish:

(i) A separate trust fund for each pre-need cemetery contract;

(ii) A single trust fund for all pre-need cemetery contracts written by an individual cemetery; or

(iii) A single master trust fund for all pre-need cemetery contracts written by multiple cemetery companies based in this state. The master trust must identify the subaccounts for each individual participating cemetery company trust.

(B) A trustee managing a trust established pursuant to this section shall:

(i) Manage the trust in accordance with the Tennessee Uniform Prudent Investor Act of 2002, compiled in title 35, chapter 14; however, § 35-14-103(b) does not apply to a trust, or a trustee managing a trust, established pursuant to subdivision (b)(2); and

(ii) Make accounting records for the trust available to the comptroller of the treasury and the department of commerce and insurance, upon request, for review and audit.

(C) If the trustee uses a board for the management of a trust established pursuant to subdivision (b)(2), then the trustee must maintain insurance on behalf

of each board member against liability asserted against or incurred by the board member in that capacity.

SECTION 5. For purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2023, the public welfare requiring it.